

TITLE III — INDIAN ENERGY

SEC. 301. SHORT TITLE.

This title may be cited as the “Native American Energy Development and Self-Determination Act of 2003”.

SEC. 302. INDIAN ENERGY.

(a) IN GENERAL.—Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read as follows:

“TITLE XXVI—INDIAN ENERGY

“SEC. 2601. DEFINITIONS.

“In this title:

“(1) The term ‘Commission’ means the Indian Energy Resource Commission established by section 2605.

“(2) The term ‘Director’ means the Director of the Office of Indian Energy Policy and Programs.

“(3) The term ‘Indian’ means an individual member of an Indian tribe who owns land or an interest in land, the title to which land—

“(A) is held in trust by the United States; or

“(B) is subject to a restriction against alienation imposed by the United States.

“(4) The term ‘Indian land’ means—

“(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

“(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

“(i) in trust by the United States for the benefit of an Indian tribe;

“(ii) by an Indian tribe, subject to restriction by the United States against alienation; or

“(iii) by a dependent Indian community; and

“(C) land conveyed to a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

“(5) The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(6) The term ‘Indian reservation’ includes—

“(A) an Indian reservation in existence as of the date of enactment of this paragraph;

“(B) a public domain Indian allotment;

1 “(C) a former reservation in the State of Oklahoma;

2 “(D) a parcel of land owned by a Native Corporation under the Alaska Native Claims
3 Settlement Act (43 U.S.C. 1601 et seq.); and

4 “(E) a dependent Indian community located within the borders of the United States,
5 regardless of whether the community is located—

6 “(i) on original or acquired territory of the community; or

7 “(ii) within or outside the boundaries of any particular State.

8 “(7) The term ‘Native Corporation’ has the meaning given the term in section 3 of the Alaska
9 Native Claims Settlement Act
10 (43 U..C. 1602).

11 “(8) The term ‘Program’ means the Indian energy resource development program established
12 under section 2603(a).

13 “(9) The term ‘Secretary’ means the Secretary of Energy.

14 “(10) The term ‘tribal consortium’ means an organization that—

15 “(A) consists of at least 2 Indian tribes and at least 2 other entities; and

16 “(B) is organized for the purpose of developing energy resources.

17 “(11) The term ‘vertical integration’ means a project or activity that promotes the location and
18 operation of facilities on Indian land to process, refine, generate electricity from or otherwise use energy
19 resources developed on Indian land, including transportation or transmission.

20 **“SEC. 2602. INDIAN ENERGY RESOURCE DEVELOPMENT ASSISTANCE.**

21 “(a) GRANTS AND LOANS.—To assist Indian tribes and tribal consortia in the management and development
22 of energy resources, the Secretary may —

23 “(1) provide grants to assist in developing or obtaining the managerial and technical capacity
24 needed to develop energy resources located on Indian land;

25 “(2) provide grants to assist in carrying out projects to promote the vertical integration of energy
26 resources located on Indian land, and to process, use, or develop those energy resources; and

27 “(3) provide low-interest loans to Indian tribes and tribal consortia to promote energy resource
28 development and vertical integration of energy resources located on Indian land.

29 “(b) TECHNICAL AND OTHER ASSISTANCE.—The Secretary may provide to Indian tribes and tribal consortia,
30 on an annual basis, grants for use in the development and maintenance of an inventory of energy resources,
31 preparation of feasibility and engineering studies, training of employees, and developing, administering,
32 implementing, and enforcing tribal laws (including regulations) governing the development and management of
33 energy resources on Indian land. The Secretary of the Interior, the Attorney General of the United States and the
34 heads of other federal agencies and departments shall provide on a reimbursable or to the extent otherwise
35 authorized on a non-reimbursable basis such technical or other assistance as may be requested by an Indian Tribe in
36 implementing the provisions of this title and in obtaining the necessary expertise to develop, operate, and maintain
37 vertical integration of energy resources either directly, through joint ventures or other commercial enterprises, or by

1 lease or contract.

2 **“SEC. 2603. LEASES INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.**

3 “(a) IN GENERAL.—Notwithstanding any other provision of law and subject to the provisions of this title, an
4 Indian or Indian tribe may —

5 “(1) enter into a lease for the purpose of energy development, including exploration, extraction,
6 processing, or other development of energy resources;

7 “(2) grant a right-of-way for a pipeline or electric transmission or distribution line; and

8 “(3) renew or extend a lease or right-of way.

9 “(b) VALIDITY.—No lease or right-of-way under this section shall be valid unless the lease or right-of-way
10 is authorized in accordance with tribal regulations adopted pursuant to section 2604. A lease or right-of-way granted
11 under approved tribal regulations shall not require the specific approval of the Secretary under section 2103 of the
12 Revised Statutes (25 U.S.C. 81).

13 **“SEC. 2604. TRIBAL REGULATIONS.**

14 “(a) SUBMISSION AND APPROVAL OR DISAPPROVAL OF TRIBAL REGULATIONS.—An Indian tribe may submit
15 to the Secretary for approval tribal regulations governing leases and rights-of-way under this section. Not later than
16 120 days after the date on which the Secretary receives tribal regulations, the Secretary shall approve or disapprove
17 the regulations unless a later date is agreed to by the tribe and the Secretary. If the Secretary disapproves tribal
18 regulations the Secretary notify the Indian tribe in writing of the basis for the disapproval, identify what changes or
19 other actions are required to address the concerns of the Secretary; and provide the Indian tribe with an opportunity
20 to revise and resubmit the regulations.

21 “(b) REQUIREMENTS.—Prior to approving any regulations, the Secretary shall be satisfied that the Indian
22 tribe has, or will obtain, the ability to administer and enforce the provisions of this title and that the regulations
23 contain provisions to—

24 “(1) ensure the acquisition of necessary information from the applicant for the lease or right-of-
25 way;

26 “(2) limit the term of the lease or conveyance of the right-of-way to thirty years or less;

27 “(3) include procedures for enforcement of the provisions of any lease or right-of-way as well as
28 for termination, suspension, relinquishment, amendments and renewals;

29 “(4) address consideration, including in the case of tribal regulations or a lease or right-of-way
30 that permit payment to be made directly to the Indian tribe, documentation of those payments sufficient to
31 enable the Secretary to discharge the trust responsibility of the United States as appropriate under
32 applicable law;

33 “(5) establish requirements for environmental review in accordance with subsection (c) and ensure
34 compliance with all applicable environmental laws;

35 “(6) identify final approval authority;

36 “(7) provide for public notification of final approvals, including providing the Secretary with a
37 copy of the lease or right-of-way document (including all amendments to and renewals of the document);

1 and

2 “(8) establish a process for consultation with any affected States concerning potential off-
3 reservation impacts associated with the lease or right-of-way.

4 “(c) ENVIRONMENTAL REVIEW PROCESS.—Tribal regulations shall establish, and include provisions to
5 ensure compliance with, an environmental review process that identifies and evaluates significant environmental
6 effects as well as mitigation alternatives and provides a process for public information and opportunity to comment
7 on any proposed lease or right-of-way before tribal approval of the lease or right-of-way (or any amendment to or
8 renewal of a lease or right-of-way);

9 “(d) PUBLIC COMMENT.—The Secretary may provide notice and opportunity for public comment on tribal
10 regulations prior to approval or disapproval.

11 “(e) NO UNITED STATES LIABILITY.—The United States shall not be liable for any loss or injury sustained
12 by any party (including an Indian tribe or any member of an Indian tribe) to a lease or right-of-way executed in
13 accordance with tribal regulations approved under this subsection.

14 “(f) PROCEDURES FOR REVIEW OF COMPLIANCE WITH REGULATIONS.—Any person may petition the
15 Secretary for review of compliance by an Indian tribe with approved regulations. The Secretary shall issue
16 regulations setting forth procedures for submission of petitions, review and comment by the Indian tribe and other
17 interested parties, determination by the Secretary, and appeals from the determination. The regulations shall require
18 that any petition be filed in a timely manner and only after tribal remedies are exhausted. The Secretary shall make a
19 determination on a petition within 60 days of the date when the petition is filed. If the Secretary determines that an
20 Indian tribe is not in compliance with tribal regulations, the Secretary shall notify the Indian tribe in writing of the
21 nature of the violation and the actions that the Indian tribe would need to take to comply with the regulations. In the
22 event that the Indian tribe does not take such action, the Secretary may rescind or suspend a lease or right-of-way or
23 revoke the approval of the tribal regulations.

24 “(g) NO EFFECT ON OTHER LAW.—Nothing in this section affects the application of any provision of—

25 “(1) the Act of May 11, 1938 (commonly known as the “Indian Mineral Leasing Act of 1938”)
26 (25 U.S.C. 396a et seq.);

27 “(2) the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.);

28 “(3) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

29 “(4) any Federal environmental law.

30 **“SEC. 2605. INDIAN ENERGY RESOURCE COMMISSION.**

31 “(a) ESTABLISHMENT.—There is established a commission to be known as the ‘Indian Energy Resource
32 Commission’.

33 “(b) MEMBERS.—The Commission shall consist of 17 Members appointed by the Secretary of the Interior
34 who will designate one as Chair—

35 “(1) 8 members based on recommendations submitted by Indian tribes with energy resources, at
36 least 4 of whom shall be elected tribal leaders;

37 “(2) 3 members based on recommendations submitted by the Governors of States with Indian land

1 with energy resources:

2 “(3) 2 members from the private sector with expertise in tribal and State taxation of energy
3 resources;

4 “(4) 2 members with expertise in oil and gas royalty management administration, including
5 auditing and accounting; and

6 “(5) 2 members from the private sector with expertise in energy development.

7 “(c) COMPENSATION.—A member of the Commission who is not an officer or employee of the Federal
8 Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed
9 for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including
10 travel time) during which the member is engaged in the performance of the duties of the Commission. A member of
11 the Commission who is an officer or employee of the Federal Government shall serve without compensation in
12 addition to the compensation received for the services of the member as an officer or employee of the Federal
13 Government.

14 “(d) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per
15 diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title
16 5, United States Code, while away from the home or regular place of business of the member in the performance of
17 the duties of the Commission.

18 “(e) STAFF AND ADMINISTRATIVE EXPENSES.—The Secretary of Interior and the Secretary of Energy shall
19 enter into a memorandum of understanding to provide for all staff, office, and administrative requirements of the
20 Commission.

21 “(f) DUTIES OF COMMISSION.—The Commission shall—

22 “(1) develop proposals to address dual taxation by Indian tribes and States of the extraction of
23 energy minerals on Indian land;

24 “(2) make recommendations to improve the management, administration, accounting, and auditing
25 of royalties associated with the production of energy minerals on Indian land;

26 “(3) develop alternatives for the collection and distribution of royalties associated with the
27 production of energy minerals on Indian land;

28 “(4) develop proposals for incentives to foster the development of energy resources on Indian land;

29 “(5) identify barriers or obstacles to the development of energy resources on Indian land, and make
30 recommendations designed to foster the development of energy resources on Indian land, in order to
31 promote economic development;

32 “(6) develop proposals for the promotion of vertical integration of energy resources on Indian land;
33 and

34 “(7) develop proposals on taxation incentives to foster the development of energy resources on
35 Indian land, including consideration of investment tax credits and enterprise zone credits.

36 “(g) REPORT.—Not later than 2 years after funds are made available for the Commission, the Commission
37 shall submit to the President of the United States, the Speaker of the United States House of Representatives, and the

1 President of the United States Senate, a report that describes the proposals, recommendations, and alternatives
2 adopted by the Commission. Before submitting the report, the Chair of the Commission shall provide to each
3 interested Indian tribe and each State with Indian land with energy resources, a draft of the report for review and
4 comment.

5 “(h) TERMINATION.—The Commission shall terminate 30 days after the date when the report is submitted.

6 **“SEC. 2606. ENERGY EFFICIENCY AND STRUCTURES ON INDIAN LAND.**

7 “(a) TECHNICAL ASSISTANCE.—The Secretary of Housing and Urban Development, in cooperation with
8 Indian tribes or tribally-designated housing entities of Indian tribes, shall provide technical assistance to initiate and
9 expand the use of energy-saving technologies in new home construction and housing rehabilitation on Indian land to
10 nonprofit and community organizations.

11 “(b) REVIEW.—The Secretary of Housing and Urban Development and the Secretary of the Interior, in
12 consultation with Indian tribes or tribally-designated housing entities of Indian tribes, shall review regulations
13 promulgated by the Secretary of Housing and Urban Development and the Secretary of the Interior to identify
14 measures to promote greater use of energy efficient technologies in housing for which Federal assistance is provided
15 under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) and
16 develop energy efficiency and conservation measures for use in connection with housing located on Indian land.

17 **“SEC. 2607. INDIAN MINERAL DEVELOPMENT REVIEW BY SECRETARY OF THE INTERIOR.**

18 “The Secretary of the Interior, in consultation with the Secretary of Energy, shall review all activities being
19 conducted under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) and not later than January 1,
20 2005 shall submit to the House of Representatives of the United States and the United States Senate a report that
21 includes the results of the review and any recommendations to ensure that Indian tribes have the opportunity to
22 develop Indian energy resources, including an analysis of barriers to the development of energy resources on Indian
23 land (including legal, fiscal, market, and other barriers) and any recommendations to remove those barriers.

24 **“SEC. 2608. CONSULTATION WITH INDIAN TRIBES.**

25 “In carrying out this title, the Secretary and the Secretary of Interior shall, as appropriate and to the
26 maximum extent practicable, involve and consult with Indian tribes in a manner consistent with the Federal trust and
27 the government-to-government relationships between Indian tribes and the Federal Government.”.

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29 **“SEC. 2609. TECHNICAL AMENDMENT.**

30 “Section 202(2) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(2))
31 is amended by inserting “improvement to achieve greater energy efficiency,” after “planning.”.